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PRIMARY AND RECENT SECONDARY SOURCES FOR THE STUDY OF ROMAN LAW

(Concluded from page 198)

(9) Roman Law in Mediaeval Europe⁸⁸. By Paul Vinogradoff†, Corpus Professor of Jurisprudence in the University of Oxford and Honorary Professor of History in the University of Moscow (London and New York, Harper and Brothers, 1909. Pp. viii, 136).

This little book, by one of the most versatile scholars in the field of historical jurisprudence, merely characterizes the principal epochs in the medieval establishment of Roman law in Western Europe. The sketch was based on lectures delivered in 1909 at the University of London. Lecture I tells the "ghost story", as the author calls it, of The Decay of Roman Law that came with the downfall of the Empire in the West. Lecture II recounts the almost miraculous revival of Roman jurisprudence, beginning in the eleventh century and radiating principally from the University of Bologna. Lecture III explains how Roman law became the foundation of the French legal system. The subject of Lecture IV is the influence of Romanesque jurisprudence, during the twelfth and the thirteenth centuries, on the fundamental legal doctrines forming the basis of the English common law, especially through Glanvill and Bracton. Lecture V describes the "reception" of Roman law in Germany, or the process by which it was planned, in the fifteenth century, to coordinate the numerous political and jurisdictional units by adoption of Roman legal doctrines. Professor Vinogradoff, it will be seen, sketched both intentional and unintentional preservation of Roman jurisprudence during the Middle Ages.

(10) A History of Continental Criminal Procedure. By A. Esmein, Professor in the Faculty of Law of the University of Paris, Translated by John Simon (Boston, Little, Brown, and Co., 1913. Pp. xiv, 640).

This book is volume five of the series having the general title of Continental Legal History⁹. It traces

the development of criminal procedure, with special reference to France. Throughout the work the presentation of the extensive evidence of European borrowings from Roman law is a striking feature. Chapter I of the introductory section, Preliminary Topics, discusses the three types of criminal procedure, the accusatory, the inquisitorial, and the mixed, with special emphasis upon their Roman origin. The next chapter sketches the rise of Roman criminal procedure, from the early accusatory tribunals and the *quaestiones* to the changes under the Empire toward the inquisitorial forms; the notes in this chapter abound in references to Latin sources. The remaining portion of the volume outlines the extension of Roman criminal procedure into medieval and modern usage, especially in France. A good index covers topics in Roman law.

(11) A History of Continental Criminal Law. By Carl Ludvig Von Barf, Professor of Law in the University of Göttingen, and Others, Translated by Thomas S. Bell (Boston, Little, Brown, and Co., 1916. Pp. lvi, 561).

This book, too, is a volume (VI) in the series entitled Continental Legal History⁹. Chapter I (in Part I, Title I) is an excellent sketch of Roman criminal law, stressing vengeance as an early source of criminal justice, the crimes, such as *perduellio*, in suppression of which private vengeance and private compensation were soon replaced by public punishment, the Roman conception of the relation of the individual to the State, the arbitrary nature of Roman criminal law, the *actiones populares*, and the changes in the forms of punishment and in the definition of the acts to be regarded as crimes, from the time of the Gracchi to the end of the Western Empire. Full notes include pertinent references to classical sources. The rest of the book has occasional sections explaining the connections of medieval and modern legal institutions with the ancient Roman law, to which reference may easily be made by use of the full Index.

(12) A History of Continental Civil Procedure. By Arthur Engelmann†, Late President of Senate in the Court of Appeals at Breslau, and Others, Translated and Edited by Robert Wyness Millar (Boston, Little, Brown, and Co., 1927. Pp. lxiii, 948).

Book II, Title I, of this volume, also in the series entitled Continental Legal History, describes the Roman judicial organization (the magistrates and the courts), the historical development of Roman civil procedure (the *legis actio*, the formulary procedure, and the remedies founded on the *imperium*), and the extraordinary procedure in relation to the procedure of the later

⁸⁸A second edition of this work appeared in 1929 (Oxford: At the Clarendon Press. Pp. 155). In a short Preface (5-6), by P. de Zulueta, Regius Professor of Civil Law in the University of Oxford, the statement is made that "...no substantial alterations <from the first edition> have been found to be necessary...." The short bibliographies of the first edition are preserved intact; the additions are "distinguished by square brackets...." The excerpts from ancient Roman law books that appear in the Appendix "have been corrected from the latest and best texts".

On the "backbone" the title of this second edition is given as "Roman Law in Mediaeval Europe". On the title-page, the authoritative source for the title of a book, and on a page preceding the title-page, we find "Roman Law in Mediaeval Europe". C. K. >

⁹The Continental Legal History Series (11 volumes) was planned by an American Editorial Committee, headed by Professor John H. Wigmore, but its valuable volumes were written by European jurists and then translated by Americans. This series is available in the libraries of the best Law Schools and in the largest public libraries. Less scholarly but suggestive is a work entitled Roman Law in the Modern World, by Charles P. Sherman (Boston, The Boston Book Co., 1917. 3 volumes. Pp. xxvii, 413; xxii, 496; vii,

315). Volume I gives a History of Roman Law and its Descent into English, French, German, Italian, Spanish, and other Modern Law, Volume II a Manual of Roman Law Illustrated by Anglo-American Law and the Modern Codes, Volume III Subject-Guides to the Texts of Roman Law, to the Modern Codes and Legal Literature, and an Index to Volumes I-III.

Empire. Book III explains in some detail the relation of the Canon Law to Roman Law. Other parts of the volume are of little interest to the student of Roman legal institutions. Numerous Latin terms appear in the Index.

Others of the remaining eight volumes of the series entitled *Continental Legal History*⁹ which are of value to students of Roman law present a general survey of the subject of the series, with chapters on Roman law in Italy, France, Spain, and in the Canon Law (Volume I), the great jurists of the world, including Gaius, Papinian, and Ulpian (Volume II), and the history of French public law, with a single chapter on The Roman Epoch in this history (Volume X).

With the foregoing analytical bibliography as a basis for estimating the sources and the importance of Roman law, it will be easy to determine the value of the following recent works on the subject as aids toward an understanding of fundamental legal institutions and in the interpretation of typical Latin classics. Though the assembling of sources of information, and the reconstructing of the legal system portrayed by these sources were done by the earlier scholars, the recent writers on phases of Roman law command attention because of their fresh interpretation, modernized terminology, and occasionally original evaluation.

(13) *A Text-Book of Roman Law*. By W. W. Buckland, Of the Inner Temple, Barrister-at-Law, Regius Professor of Civil Law in the University of Cambridge (Cambridge: At the University Press, or New York, Macmillan, 1932. Pp. xvi, 763).

The first edition of this book appeared in 1921. For the second edition "No change has been made in the plan of the book...." New views of such matters as *aequitas*, *cura prodigi*, *filiifamilias* and *filiaefamilias*, and *possessio*, for example, appear in the new edition, necessitating added paragraphs and altered statements. About fifty points in the text have undergone some kind of revision. Notes have been revised in accordance with textual revisions as well [with] as recent literature on the subject. Otherwise, the book remains in the form and in the substance of its first appearance.

According to the Preface to First Edition¹⁰, the "pages <of this book> contain an attempt to state the main rules of the Private Law of the Roman Empire for the use of students...." Since "the chief purpose of the writer has been to set out the established or accepted doctrines....", the general plan of his work follows "the arrangement adopted by Gaius and followed by Justinian in his *Institutes*...." Though "the subject treated is the law of the Empire....", the starting-point for the book is the age of Cicero, whose "writings give us the earliest contemporary account, from a more or less legal point of view, of the system of Private Law....", and whose contemporaries, Gallus Aquilius, Quintus Mucius, and Servius Sulpicius, added much to the law. Such a starting-point for a statement of the Private Law

of the Empire is justified on the ground that "the system elaborated by Labeo and his successors has its roots in the past and is scarcely intelligible without some knowledge of the earlier institutions on which it is based...." Moreover, the Greek influence on Roman legal institutions was becoming important in the time of Cicero. For example, the idea of the *ius naturale* was "borrowed from Greek philosophy...." But the subject-matter of the book is derived mainly from the legal developments of a period of about five hundred years, from Labeo to Tribonian. Careful and patient reading of this book is a juridical education in itself.

A bibliography of one hundred titles of secondary sources precedes the main text of the book, which is also well annotated. The work is divided into fifteen chapters, the first of which is entitled *The Sources of the Law in the Empire*. These sources are the Twelve Tables; comitial legislation or *plebiscita* and *leges*; the edicts of the magistrates, especially of the praetors (whose initiative was stopped by the codification of edictal law by Julian soon after 125 A. D., at the order of Hadrian); *senatusconsulta*, especially those of the early Empire; the *decreta*, *edicta*, *epistolae*, *mandata*, *placita*, *rescripta*, and *subscriptiones* of the Emperors (which had the force of law); the *responsa* of the jurists in their threefold capacity, *respondere*, *agere*, and *cavere*; the remains of juristic literature, especially of Gaius, Julian, Papinian, Paul, and Ulpian; Roman materials in barbarian codes, as, for example, *Breviarium Alaricianum* (an abstract of the *Lex Romana Visigothorum*) and *Edictum Theoderici* (a mixed code for both Goths and Romans, promulgated by Theoderic the Great, King of the Ostrogoths in Italy, 493-526 A. D.); late imperial legislation before Justinian, embodied, for example, in *Codex Hermogenianus* (a huge private collection, named after its author and often cited in the Digest) and *Codex Theodosianus* (see Number 4, above); and, finally, Justinian's Code, Digest, Institutes, and 'Novels' (see Number 5, above). Besides the foregoing *ius scriptum*, most of which is to be found in Justinian's *Corpus Iuris Civilis*, custom, included in *ius civile*, *ius gentium*, *ius naturale*, etc., was a 'source' of law, since (52) "...Long continued usage was recognised... as a kind of tacit consent, equivalent to legislation...."

The remaining chapters of the book are arranged according to the famous saying, *omne ius quo ulimur vel ad personas pertinet vel ad res vel ad actiones*¹¹, just as the books of Girard and Cuq are arranged (see Numbers 7, 8, above). Chapters II, III, and IV, therefore, analyze the law of persons, with reference to slavery¹², liberty, and citizenship, and the law of the family and of persons *sui iuris*. Chapters V-XII present a lengthy statement of the law of property, personal and real, the types of ownership, the *iure*

¹⁰See Gaius 1. 8; Institutes (Justinian) 1. 2. 12; Digest 1. 5. 1.

¹¹See also W. W. Buckland, *The Roman Law of Slavery* (Cambridge: At the University Press, 1908. Pp. xii, 735). Other books by the same author and the same publishers are *Manual of Roman Private Law* (1925), and *Main Institutions of Roman Private Law* (1931).

¹²The quotations in this paragraph are from the author's Preface to First Edition, v, vi, vii.

gentium and the *iure civili* modes of acquisition of property, acquisition *per universitatem*, and the laws of wills, of succession, and of obligations or contracts. Chapters XIII–XV depict the law of procedure, the *legis actio*, the *formula*, *cognitio*, incidental rules of procedure, and praetorian remedies. A seventeen-page index consists almost entirely of Latin terms.

(14) *Offences Against the State in Roman Law*. By Pandias M. Schisas (University of London Press, 1926. Pp. xx, 248).

Part I of this book explains offences against the State, such as *perduellio* and *maiestas*. Chapter I of Part II describes the courts competent to try offences against the State during the regal period, e. g. the King, *interrex*, and the *praefectus urbi*. Chapter II of Part II discusses the courts of the 'Republican' period, the consul (with changed jurisdiction brought in by *provocatio*), the *interrex*, the *praefectus urbi*, the court of *duoviri perduellionis*, the dictator, the *decemviri*, military tribunes, the praetor, the tribune of the plebs, the jury-court of *maiestas*, the jurors and the president of the *quaestiones perpetuae*, the selection, number, empanelling, challenging, and swearing of jurors, their manner of voting, the unappealable sentences of the *quaestiones perpetuae*, and the Assembly of the People as a court of appeal. The final chapter (Chapter III of Part II) explains the rise of new criminal courts under the Principate, the decay of the *quaestio de maiestate*, the consular-senatorial court, the Princeps as a judge of *maiestas*, the evolution of the *consilium principis*, the *praefectus praetorio*, the deputies of the Princeps as judges of *maiestas*, the new duties of the *praefectus urbi*, of the *praefectus praetorio*, and of governors of provinces, and, finally, appealable sentences and rules of appeal. A bibliography of Ancient Authorities, arranged alphabetically from Aelianus to Zonaras, and of Modern Authorities (very brief) is appended. The Index comprises mainly Roman legal cases and Latin legal terms.

(15) *La Loi de Hiéron et les Romains*. By Jérôme Carcopino (Paris, Fontemoing et Cie, 1914. Pp. xvii, 309).

This book shows part of what, with fitting collateral research, can be learned from Cicero's Verrine Orations (see under Number [3], above)¹³. 'The Law of Hiero and of the Romans', usually called the *Lex Hieronica* out of consideration for the faithful alliance of King Hiero of Syracuse with Rome, represents the first Roman attempt to regulate the affairs of Sicily. The notes in this book include twice as many citations from the Verrine Orations as from all other sources, both primary and secondary, combined. Since more is known of the *lex provinciae* for Sicily than of all the other *leges provinciarum*, Carcopino's book portrays well the Roman provincial administration. Both the *Lex Hieronica* and the *Leges Rupiliae*, comprising the final form of the *Lex Provinciae* for Sicily, are analyzed and elaborately discussed. The title of the book does not indicate all the legal history

that its author has extracted from the Verrine Orations. The book presents also a fairly complete outline of the procedure of the local and the Roman provincial courts.

The text is divided into three sections, the first of which deals with pre-Roman legislation. The most important part of Section II (on Roman legislation) is the chapter (III) which describes the civil and criminal procedure of the local and the Roman courts; the other four chapters of this section outline the administrative law. Section III shows how the Roman administration effected the ruin of Sicilian agriculture by the time of Cicero. An Index Nominum et Rerum occupies five pages, an Index Auctorum, of ten pages, includes modern authors, ancient authors, and Cicero, (a) works other than the Verrines (one page), (b) the Verrines (six pages).

(16) *Historical Introduction to the Study of Roman Law*. By H. F. Jolowicz, Of the Inner Temple, Barrister-at-Law, Professor of Roman Law in the University of London (Cambridge: At the University Press, or New York, Macmillan, 1932. Pp. xxi, 545).

Since the subject of Professor Buckland's Text-Book (see Number 13, above) "is the Law, not the history of the Law . . .", Professor Jolowicz aimed to supplement this work and "to give the student what he needs to know about Roman law rather than the Roman law itself . . ." He states further in his Preface that his "main emphasis is on the sources of law and the constitutional developments without which the nature of the sources cannot be understood . . ." The book explains also procedure and judicial structure, though too often incidentally. "The text is meant to be intelligible to any reader, even if he has no previous acquaintance with the subject . . ." References to Buckland's Text-Book are made to the second edition of the work.

Preceding the text is a bibliography of primary sources, latest editions of old standard works, and recent works on the subject, comprising in all eighty titles. Then after outlining the 'Republican' constitution, Professor Jolowicz deals with the law according to the Twelve Tables and the private law from the Twelve Tables to the fall of the 'Republic'. Chapter XIX deals with The Constitution under the Principate. Chapters XXI–XXIV are concerned with Sources of Law in the Principate, Legal Science during the Principate, Jurisdiction and Procedure in the Principate, and General Character of the Classical Law. Chapters XXV–XXVII deal with The Constitution under the Dominate, Procedure and Jurisdiction in the Dominate, Sources in the Dominate. The final chapters (XXVIII–XXIX) are on The Legislation of Justinian and the General Character of the Post-Classical Law. Six chapters (VII–XII) cover the interpretation of the Twelve Tables, whereas but five chapters (XIII–XVII) are given to private law from the Twelve Tables to the fall of the 'Republic'. This means that the influence and the accomplishment of the praetors toward the perfection of Roman law is not sufficiently stressed.

However, the book does well what its author in-

¹³For further illustration of what may be gleaned from Cicero's writings see A. H. J. Greenidge, *The Legal Procedure of Cicero's Time* (Oxford: At the Clarendon Press, 1901. Pp. xiii, 599). ■

tended it should do, for it supplements Professor Buckland's Text-Book, though not in the same order of treatment. Professor Jolowicz is rather dogmatic about some doubtful points, such as the nature and the functions of the *concilium plebis* and the permanence of the *duoviri perduellionis* as representatives of the consuls 'in cases of treason'. The chapter (XVIII) on Criminal Law in the Republic is too brief, especially in respect to the *quaestiones perpetuae*, for the reforms of Sulla are scarcely mentioned; this deficiency is difficult to explain in view of the author's references to Mommsen's *Strafrecht* (see Number 6, above). Nor can his extreme skepticism concerning Cicero's reliability as a witness and an authority on the private law of the 'Republic' be any more easily explained, even though Cicero was, as he says, connected mostly with criminal cases. Certainly the *praefectus urbi* and the *praefectus praetorio*, under the Principate and later, should not be dealt with so casually in a book of this kind. Nevertheless, the book affords a good opportunity to study Roman law in the making as well as those phases of Roman civilization which were most original and characteristic. Students of the constitutional history of Rome cannot afford to ignore this book. It is fairly well annotated. A ten-page Index, mostly of Latin terms, is adequate as a guide to the text, especially in view of the full Table of Contents.

(17) Rome the Law-Giver. By Joseph Declareuil, Professor at the University of Toulouse, Translated by E. A. Parker (London, Kegan Paul, Trench, Trübner, and Co., or New York, Alfred A. Knopf, 1927. Pp. xvi, 416).

This book is a volume in the series on the History of Civilization¹³. The Foreword, written by M. Henri Berr, declares (xiii) that law "is a product of social life, is at any rate ultimately associated with the history of ideas. . . ." Hence (xiii) "to devote a whole volume in the series to Roman Law is in strict accord with the nature of things. . . ." The aim of this volume is to emphasize (xiii) "the activity of Rome as conscious originator of Law. . . ." M. Berr states further (xv) that "the Romans achieved their legal work slowly and empirically, and yet it has a logical basis that never loses its validity. . . .", and that (xvi) "J. Declareuil has taken very great care to connect Roman Law with the general course of legal, sociological, and historical evolution".

Professor Declareuil himself indicates the importance of his subject by saying that the Romans created "a body or, more accurately, several bodies of doctrine and of rational forms for almost all the situations and for many aspects of social life. . . ." (4; compare 6, 379-380). The Prolgomena comprise two chapters on The Place of Roman Law in the Ancient World and on The Formation or External History of Roman Law. The rest of the work is divided into two books on The Ancient Customs and the Formation of Classical Law, with a total of eight chapters following the unusual order of procedure, persons, and property (instead of persons, property, and procedure) and on The

Law of the Lower Empire and the Reforms of Justinian, with seven chapters tracing the later improvements in the laws of procedure, persons, and property. Notable chapters are those on The 'Gens' and the City (Book I, Chapter 1), on The Family and its Dependencies (Book I, Chapter 3, and Book II, Chapter 3), on Corporative Life and Artificial Persons (Book I, Chapter 4), on The System of Corporations (Book II, Chapter 4), and on The Law of Inheritance and Gifts (Book I, Chapter 8, and Book II, Chapter 7). Much of the purely technical phraseology appearing in other books on Roman law has been translated into the language of the layman, either by the author himself or by the translator. A thirteen-page bibliography classifies materials on the subject under Sources, Epigraphical Collections, French Periodicals, Foreign Periodicals, Dictionaries and Miscellanies, and General Works and Monographs. The items under the heading General Works and Monographs are three times as numerous as the total of the items under all the other headings that Professor Declareuil has listed. His list of secondary works is fairly complete, though French works are predominant; Buckland's Text-Book (First Edition, 1921; see Number 13, above), for example, is omitted. A brief index is concerned with Latin terms, and with ancient and modern jurists and law-makers.

The books on Roman law, especially those with indexes of Latin terms, could be serviceable along with the usual Latin dictionaries. Suppose—to take an extreme example—that the student is seeking the full meaning of the expression *ius civile*. Now Cicero says¹⁴: *ius civile id esse quod in legibus, senatus consultis, rebus iudicatis, iurispritorum auctoritate, edictis magistratus, more, aequitate consistat*. Each term in Cicero's definition has a history of its own. A considerable understanding of legal developments is, therefore, required before one can ascertain what the Romans meant by *ius civile*. Merely to translate the term by 'civil law' is to shirk real interpretation. What is true of this one term is true, in general, concerning a great many others, such as those which appear in the preceding pages.

Moreover, it must not be forgotten that the Romans produced legal concepts with such precision that for fifteen hundred years the great jurists of the world have done little more to improve them than the great logicians have done to improve Aristotelian logic. In short, it is as necessary to acquire *ideas* from Latin literature, an important part of which is the original literature of Roman law, as it is to acquire ideas from the history of Thucydides or the dialogues of Plato. Basic in everyday life, and in most instances original with the Romans, are the legal concepts of citizens' rights, of the State's responsibility in protecting those rights, of types of ownership, whether fictional or not, of testamentary disposition of property, of contractual obligations, of modes of proof in court, etc. Roman law abounds in clearly defined ideas, which, of course, are good materials with whose help one may learn to think. It is distinctively characteristic of Roman

¹³See note 9, above.

¹⁴Topics 28.

civilization. Teachers of Latin should be as much concerned about the *Roman ideas in modern thought*, most apparent in the history of legal institutions, as they are about the Latin elements in modern languages. It is unnecessary to remind readers of THE CLASSICAL WEEKLY that the original Roman ideas are most surely acquired from the writings of the Romans themselves. Hence books on Roman law are guides not only toward an understanding of legalistic Latin writings, but also toward an understanding of the most characteristic phase of Roman civilization.

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ARCHAEOLOGICAL NOTE ON JUVENAL 6.486-504

Praefectura domus Sicula non mitior aula, nam, si constituit solitque decentius optat ornari et prosperat iamque expectatur in hortis aut apud Isiacae potius sacraria lenae, disponit crinem laceratis ipsa capillis nuda umero Psecas infelix nudisque mamillis. "Altior hic quare cincinnus?" Taurea punit continuo flexi crimen facinusque capilli. Quid Psecas admisit? Quenam est hic culpa puellae, si tibi displicuit nasus tuus? Altera laevum extendit pectusque comas et volvit in orbem. Est in consilio materna admotaque lanis emerita quae cessat acu; sententia prima huius erit, post hanc aetate atque arte minores censebunt, tamquam famae discrimen agatur aut animae. Tanta est quaerendi cura decoris; tot premit ordinibus, tot adhuc compagibus altum aedificat caput. Andromachen a fronte videbis; post minor est; credas aliam.

Editors seem not to have attempted to link the headdress described by Juvenal to any special type known from the monuments. "*Altior hic quare cincinnus?*" (492), *Altera... orbem* (495-496), and still more *tot premit... credas aliam* (502-504) would fit best the style of headdress so well known from the busts and statues believed to represent Julia, daughter of Titus, and from so many others in the museums. A well known example is in the National Museum at Naples (232), in the statue called Giulia di Tito. They are found, however, in most large museums. There are several in the British Museum, in the Ny Carlsberg Museum at Copenhagen, and in the Uffizi Gallery at Florence, besides the instances referred to below.

At first sight it might seem strange that Juvenal should apparently describe here a headdress that was fashionable at a considerably earlier date, but Frederick Poulsen (Greek and Roman Portraits in English Country Houses (Oxford: At the Clarendon Press, 1923)) throws some light on the question. He has five examples of this or similar dressing of the hair: see Figure 41 (facing page 65), which shows the tombstone of Claudius Agathemerus (Ashmolean Museum, Oxford); Figures 42, 43 (facing page 72), which show a statue of a Roman lady (at Syracuse); Figures 44, 45 (facing page 72), which show the head of a Roman lady, on a modern bust (in Petrograd); Figure 45¹ (facing page 63), which shows the head of a young Roman girl (at Ince Blundell Hall); Figure 53 (facing page 71), which shows the bust of a Roman woman of Trajan's Age (at Lansdowne House).

In his description of Figure 53 Poulsen says (page 71):

"...the woman on the grave-relief of Claudius Agathemerus at Oxford (fig. 41, facing p. 65) has this

dressing, the man the forehead-hair usual under Trajan... Just as in the Lansdowne House bust, so also in a portrait of a woman in Madrid, the shape of the bust is instructive, and points definitely to Trajan's age..."

On Figures 42, 43 Poulsen says (71-72):

"...The transition from the Flavian to the Trajanic age is illustrated by... the beautiful dignified female statue in the Museum at Syracuse, found in the Gymnasium of Syracuse..."

On Figures 44, 45 he says (72):

"...Related to the Lansdowne portrait by the shape of the hair-dressing is a head on a modern bust in Petrograd..."

On his other Figure 45 (facing page 63) he says (64):

"HEAD OF A YOUNG ROMAN WOMAN OF THE AGE OF DOMITIAN..."

This is an unimportant portrait of a commonplace, round-cheeked young girl. The curly dressing of the hair over the forehead, and the heavy putting up of the hair behind, permit a precise dating..."

On Figure 53 (facing page 71) he says (71):

"A portrait of an elderly, stout, and dignified lady, with a high arched forehead and rather prominent sagacious eyes... She wears behind a turban-like hair-dressing and over the forehead the hair is raised high with big curls. In this shape the sponge-like curl-dressing of the hair appears for the first time in the age of Trajan, though we have met with it from the Flavian period in No. 45 <The Ince Blundell head>..."

He then refers to the woman on the grave relief (Figure 41), and to various portrait busts which have this style of hair-dressing, and concludes (72):

"...And that this dressing of the hair in any case continued in Africa to the beginning of Hadrian's reign is shown by a grave relief of stucco from a cemetery close to La Malga by Carthage, which can be dated by the tiles to about A. D. 120. In another Roman province this Flavian-Trajanic dressing of the hair also lingered long, namely in representations of the German matron goddesses from the Rhineland".

In this connection there may be quoted an example from Bath, England, No. 20 in the Catalogue of Antiquities Displayed at the Roman Baths. It is thus described:

"Colossal female head, with hair dressed in a peculiar fashion current about A.D. 70-100. If it once belonged to a statue, the whole figure must have been over eight feet high, but it may be an independent bust. Who is represented is unknown, probably some lady of the epoch mentioned".

The hair-dressing on this bust is the characteristic "sponge-like curl-dressing".

The head in a private collection at Barcelona, which came from Ampurias, the Greek colony near by, has been tentatively identified as representing Julia, the daughter of Titus. It has the hair-dressing found on the heads usually attributed to her, but does not seem specially to resemble her, or to have any decisive marks of date.

A small terra cotta head in the Archaeological Museum at Seville, described as "Retrato de Matidia esposa de Trajano? <sic>. Procedente de Italica", shows perhaps the highest and most elaborate hair-dressing known, but this is not the "sponge-like curl-dressing", but more like that of the Elder Faustina in the Chatsworth bust². The head at Seville would suit lines 502-504 in Juvenal well enough, but "*Altior hic quare cincinnus?*" (492) fits better the "sponge-like

¹The numbering here shows some confusion and duplication. ²For a review, by Professor A. D. Fraser, of this work by Poulsen see THE CLASSICAL WEEKLY 19.164-165. C. K.

²See Mrs. Eugénie Strong, Roman Sculpture From Augustus to Constantine, Plate CXIX, facing page 372 (New York, Scribner's, 1907).

curl-dressing" of the examples previously mentioned, which correspond also in respect of height (*altum aedificat caput* . . . , 402-403).

Mrs. Strong has an excellent example of the "sponge-like" type in Plate CXV (opposite page 366), which shows a group of a lady and her daughter (at Chatsworth). She says (366-367):

"...The mother wears the high, honey-combed coiffure of the women of fashion in Flavian days...."

The high coiffure was not affected outside court or fashionable circles...."

On page 365 she says:

"...The general Flavian type—at any rate, as it reigned in Court circles—is well known, owing to the high dressing of the hair, which was curled in front into numberless tight ringlets, supported doubtless on a wire frame. These are rendered in stone by riddling the surface with holes, around each of which the lines of the hair are carefully carved. Most of these heads are indiscriminately labelled as 'Julia,' the daughter of Titus...."

Lady Evans, in her article on Hair-Dressing of Roman Ladies as Illustrated on Coins³, referred thus to Juvenal (49-50):

"The full front fringe of hair (the 'orbis') had to be most regular in its disposition (Juv. vi. 502⁴), and very regular it certainly appears on coins and monuments. In height it often doubles the height of the face. It is impossible to believe that it was anything but artificial, resembling, as it does, the 'transformations' thrust on our notice by the advertising hairdressers in our modern illustrated papers. Julia, daughter of Titus, who died in 81 A. D., affords a good example of this style. Illustration xxi. Julia's hair, assuming the curled 'front' to be an addition, is gathered closely to the head, and ends in the usual 'catogan'.... Domitia, wife of Domitian, c. 82 A. D., dresses her hair almost exactly like Julia Titi. (Illustrations xxiii. xxiv)."

It will be seen from these quotations that Lady Evans, though she quoted Juvenal, showed no consciousness of the need of explaining why Juvenal describes this headdress as still worn more than a generation later. It would also seem to me that the *orbis* cannot have been artificial, as the whole process of doing the hair is described in the Juvenal passage by the words *extendit pectique comas et volvit in orbem* (496). No doubt the hair was supported by some kind of frame or cushion. The examples on the coins are less bizarre than those on the busts and the statues, perhaps because portraiture on coins is more conservative and the subjects on the coins are ladies of the imperial family, or goddesses, but also no doubt because of the difference of material. See Mrs. Strong's description, quoted above, of the methods of the stone cutters.

Lady Evans referred to the amusing descriptions of hair-dressing in Ovid, *Ars Amatoria* 3.133-168. Although this is so much earlier in date, it may be worth while to quote verses 133-136:

Munditiis capimur: non sint sine lege capilli.

Admotae formam dantque negantque manus.

Nec genus ornatus unum est: quod quamque decebit eligat, et speculum consulat ante suum.

Later (149-152) Ovid compares the number of styles of hair-dressing to the number of acorns on an oak or of the bees of Hybla or of the wild beasts of the Alps.

From the evidence, then, of the monuments as set forth by Poulsen it would seem that there is no objection in point of date to the supposition that in the lines under discussion Juvenal is describing the "sponge-like curl-dressing" which suits his words so well.

On the other hand the hair-dressing can hardly be said to contribute toward settling the date of Satire

6, which is usually put about 116 A. D., on account of supposed allusions to a comet and an earthquake. I have always thought this gave too long a gap between Book 1 of the Satires (Satires 1-5), published soon after 100 A. D., probably between 100 and 102, and Book 2 (Satire 6); and I should be disposed to agree with P. Ercole (*La Cronologia delle Satire di Giovenale*, *Rivista di Filologia*, New Series 7 [1929], 184-207, and 346-358). Professor Ercole says there was a comet in 110 A. D., and he thinks that the inundations and the earthquakes referred to are merely poetical accessories. He dates this part of Satire 6 not later than 111, and thinks that some parts of the Satire may have been written in 105 or 106⁵.

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CICERO, IN CATILINAM 1.1

In *The Classical Journal* 29.149-150 (November, 1933), under the caption A Question of Indirect Questions, Professor Dorrance S. White, the editor of that department of *The Classical Journal* which is entitled Hints for Teachers, submits the following for consideration.

"*Quid proxima, quid superiore nocte egeris, ubi fueris, quos convocaveris, quid consili ceperis quem nostrum ignorare arbitraris?*" is generally mistranslated 'Who of us do you think is ignorant what you did last night, what the night before last' with no explanation of *quem ignorare*. To explain it as a rhetorical question is inadequate. None of the recent editions of Cicero refer to it. Even the latest and most scholarly edition writes, 'The direct question carries with it five indirect questions,' which is both incomplete and misleading. Is *quid proxima, quid superiore* one question or two? If one, then *quem ignorare* must by these editors be classed as an indirect question. Wrong. 'Gildersleeve's Latin Grammar (1894), 315: '*Quis (qui)*, fainter than *aliquis*, is used chiefly after *si*, if; *nisi*, unless; *ne*, lest; *num*, whether, and in relative sentences.' Harkness' Latin Grammar, 512: 'Of these, *quis*, any one, is the most indefinite.' *Ponere iubebam, de quo quis audire vellet* (C. Tusc. 1, 4, 7); *num quis, cui eligendi potestas esset quemquam his anteponebat!* (C. Brutus, 50). Therefore, 'Do you think any one of us is ignorant what you did last night' is the only correct rendering of the above passage."

Thus writes E. D. Daniels of the Boys' High School, Brooklyn, New York. Without question the *quid*-clauses which Dr. Daniels first quotes are indirect and depend upon *ignorare*, as the notes in all editions make haste to state. And undoubtedly *quem* is the subject of *ignorare* and the two are the object of *arbitraris*, which is the independent verb. Furthermore, all will probably agree that *quem* is the indefinite rather than the interrogative. But whether we translate 'What one of us do you think does not know,' as is suggested in the Sanford, Scott, Beeson textbook, or 'Do you think that any one of us does not know,' is in the opinion of the editor the difference between Tweedle-dum and Tweedle-dee. Cicero might have meant *quem* to have the force of an interrogative without writing *ignorare* as *ignoret*, if he could write such a sentence as this in *In Cat.* iv. 9. 19: *Cogitate quantis laboribus fundatum imperium, quanta virtute stabilitum libertatem, quanta deorum benignitate auctas exaggeratasque fortunas, una nox paene delebit.* Here is a sentence to diagram!"

I have quoted this note in full in order that what follows may be clearer.

Dr. Daniels, I incline to think, has conjured up for himself here a difficulty that does not exist. What we

³Numismatic Chronicle 6 (1906), 37-65, Plates III-VI.
⁴496?

⁵This paper was read by title at the meeting of the American Philological Association, at Washington, December, 1933.

find is a direct question, *quem nostrum ignorare arbitraris?* upon which a series of indirect questions, *Quid...ceperis*, is made to depend. Whether we regard the series of indirect questions as five in number or only four is a matter of no consequence. Nor is there warrant to conclude that, because some editors make the number five, they must therefore have included *quem ignorare* as one, and so are to be adjudged guilty of a palpable blunder. Obviously enough they are counting *egeris* twice, and not without reason, since *quid proxima* and *quid superiore nocte egeris* are questions that would require separate answers. The remark, then, quoted from "the latest and most scholarly edition", whether or not complete as an annotation, is certainly not misleading.

No, *quem* in the sentence under consideration is an interrogative pronoun introducing a direct question, and that question is of course rhetorical. There is nothing in either of the Latin Grammars referred to by Dr. Daniels which would give even plausibility to his view that *quem* here is the indefinite pronoun. On the contrary, careful reading of the Gildersleeve-Lodge Grammar alone should have shown that the limitations set upon the indefinite *quis* are such as would exclude its use in the sentence under discussion. The Hale and Buck Latin Grammar (276, 1) makes matters even clearer by saying, "*Quis*..., the vaguest of the indefinites, ... always stands after one or more words of its clause".

If anything further be required to show how untenable is the position taken by Dr. Daniels and Professor White, reference might be made to one of the more comprehensive Latin Grammars, say Kühner's *Lateinische Grammatik*, second edition, by Carl Stegmann, Volume 2, Part 1 (Hanover, Hahnsche Buchhandlung, 1912). There, in § 119 (pages 633-654), one will find a pretty complete statement regarding indefinite pronouns. Subsection 1 b (634), which deals with *quis*, *quid*, and their adjectival forms, bears directly on the question at issue. Having read this, one should turn to 3 b (638) and see what is said there about *quisquam* in rhetorical questions. It would be illuminating also to turn up each of these indefinite pronouns in the *Lexikons* in which H. Merguet records Ciceronian usage.

Professor White, in his comment on Dr. Daniels's suggestion, has, it seems to me, too readily acquiesced in the imputation that successive generations of scholars have been perpetuating an error about the meaning of *quem* in the passage before us (in *The Classical Journal* 29.312 [January, 1934] Professor White recanted, and states that *quem* in the passage under consideration is "an interrogative and not an indefinite....", but he does not really discuss the matter). I am not one of those who "will probably agree that *quem* is the indefinite rather than the interrogative...." Nor do I view the distinction to be made here between 'what one?' and 'any one' as no more than the difference between tweedle-dum and tweedle-dee. The real matter at issue is far more than that. It is a matter of familiarizing one's self with correct usage in Latin, and then insisting upon adherence to it. Latin is not so poorly supplied with indefinite pronouns that a Roman writer—least of all Cicero—must needs use a form that is equivocal. On the other hand, no one, I assume, would wish to imply that Cicero was indifferent to equivocality. *Quemquam*, I suggest, would have been the word employed here by him had he intended to express the equivalent of 'anyone' (in a sentence which so plainly—in logic—has negative implication). Compare e. g. *Pro Plancio* 71 *Et quemquam putas fuisse tam excordem qui... non putaret? Divinatio in Caecilium* 60 *quemquam horum esse putas qui non malit te... discedere?*

Dr. Daniels does not make it plain what to him militates against the acceptance of *quem* as the interrogative. If it be the word-order of the sentence

as a whole, with the series of indirect questions preceding, one might ask him to compare *Pro Plancio* 186 *Qui enim status, quod discrimen, quae fuerit in re publica tempestas illa quis nescit?* If it be that *quem* as an interrogative has to stand in the accusative case as the subject of an infinitive, one may confidently refer him to *Livy* 35.14.5 (the conversation which is said to have taken place between Hannibal and Scipio Africanus at the court of Antiochus): *querenti Africano quem fuisse maximum imperatorem Hannibal crederet, respondisse Alexandrum Macedonum regem*. Here beyond all gainsaying *quem* is interrogative, and as an interrogative differs from the *quem* which troubles Dr. Daniels only in that it introduces an indirect question instead of a direct question. The use of an interrogative pronoun as subject of an infinitive is common enough. Compare e. g. *Cicero, De Imperio Cn. Pompei* 38 *tum facilius statuetis quid apud exteris nationes fieri existimetis*.

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Addendum

I agree completely with Mr. Wightman.

Cicero might have written *Quid...ceperis omnes nos scimus (cognovimus)*. This would have been prosaic, dull. He could have said, also prosaically, but more effectively, *Quid...ceperis nemo nostrum ignorat (nescit)*. He could also have said *Quid...ceperis quis nostrum ignorat (nescit)?* No one would have mistaken this last form; everybody would have seen that *quis* must here be the interrogative pronoun. Now, in point of fact Cicero has merely subjected *quis nostrum ignorat* in syntax to *arbitraris*, by writing *quem nostrum ignorare arbitraris?* He has in no way altered the character of *quem*; the word is still the interrogative. Had he written merely *quis nostrum ignorat?*, Cicero would have flung out his question to the world in general (including of course Catiline). By the form he has in fact used, *quem nostrum ignorare arbitraris?*, he flung the question directly into the face of Catiline, and so spoke with immensely greater force and effectiveness.

Suppose Cicero had written his sentence with the following word-order: *Quem nostrum ignorare arbitraris quid...ceperis?* Would any one have misunderstood this? Would any one then have taken *quem* as the indefinite pronoun? Does the postponement of *quem...arbitraris* alter at all the nature of *quem*? Is not the word-order of the sentence as written infinitely better than *Quem...ceperis* would have been?

I agree with Mr. Wightman that the only indefinite pronoun possible here would be *quemquam*.

On its surface the sentence *quem...arbitraris* is non-committal, that is, the questioner does not plainly cry aloud what answer he expected to his question, whereas, if he had written *quemquam*, instead of *quem*, he would have proclaimed to the world what answer (negative) he expected. *Refraining from indicating in terms what answer one expects may be immensely effective*. In *In Catilinam* 1.7 Cicero says *Meministine me ante diem XII Kalendas Novembres dicere in senatu...?* Now, the modern reader, who knows from various sources the background of this speech, instinctively renders here by 'You remember, do you not...?' But Cicero's form is far more effective than *Nonne meministi...* would have been. By using *-ne*, rather than *nonne*, he leaves Catiline—or seems to leave Catiline—free to answer 'Yes' or 'No' as he pleases. To answer 'No' would be to lie, publicly, and uselessly, since the facts were known to everybody. To answer 'Yes' would be to convict oneself when, to all appearances, denial was possible. For a sentence constructed in like fashion see *In Catilinam* 1.15 *Potestne tibi haec lux, Catilina, aut huius*

caeli spiritus esse iucundus....? There is a long array of questions in Latin authors in which to modern feeling *-ne* equals, as editors say, *nonne* or *num*, but which are in reality to be explained as I have explained in *Catilinam* 1.7.

I am perfectly willing to admit that, to Roman hearers and readers, as to modern readers, such questions, though *in form* non-committal with regard to the expected answer, often enough—perhaps always—conveyed an *implication* with regard to the answer expected. So in *In Catilinam* 1.1 the *logical implication* suggests a negative answer as expected; hence, as was said above, if an indefinite were used here, the indefinite would be *quemquam*.

With a view to keeping the effect of the word-order I should render *Quid...arbitraris?* thus: 'What you did last night, what the night before that, where you were, whom you called together, what plan you chose—who of us, think you, is unaware?'

What Professor White meant by his final sentences, "Cicero might have meant.... Here is a sentence to diagram!" I do not know. The combination in Cicero of *quem* accusative with *ignoret*, a finite verb, is too much for my imagination. Further, the sentence quoted from *In Catilinam* 4.19 is in no way parallel. In that sentence *quantis*, *quanta*, *quanta*, must be interrogatives: there can be no difference of opinion about that. I myself think there can not *rightly* be a difference of opinion about *quem* in *In Catilinam* 1.1, but there *has been*—*mirabile dictu*—such difference. In 1.1 the sentence is—to me—clear as crystal, and perfect in syntax and in style. In 4.19 there is, in plain English, some blundering. Cicero had in mind something like 'Think <on the one hand: *ut*> what enormous labors went into the founding of sovereignty, what manliness into the establishment of liberty, what gracious kindness of heaven into the enlarging and strengthening of our fortunes, <how, on the other hand: *de*> a single night almost obliterated all this!' The first idea, 'What enormous labors... fortunes' Cicero expressed fully; from his expression of the second he omitted the important introductory word 'how'. We all know that often in Latin a contrast which the Greeks brought out by using *ut...de* is left to the reader's own logical power to sense. In the sentence under discussion the subjunctive *delerit* is correct enough, in a dependent (indirect) question. Had Cicero written <*quem ad modum autem*> *una nox paene deleuit*, all would have been well.

I should render the sentence in 4.19 as follows: 'Think how our sovereignty, founded by toils so enormous, independence established by manliness so splendid, success increased and enlarged by divine graciousness so generous a single night almost wholly obliterated'.

CHARLES KNAPP

THE MAN-GOD RULER

In an article by Mr. Hugh Byas in *The New York Times* of December 23, 1933, announcing the birth of an heir to the throne of Japan, we read:

"The son born yesterday is, according to a Japanese tradition which some historians challenge, the 125th Emperor in an unbroken line which the Japanese believe is descended from the Sun Goddess who ruled the nation in legendary times. If the child lives, he will succeed his father to a throne that has been the object of religious veneration for a period set by legend at 2,593 years and will become the sacred man-god ruler of his people".

One is reminded of the famous passage in Herodotus (2.142-143), in which ridicule is cast upon all claims that men can be descended from gods. In 143 we read¹:

"Hecataeus the historian was once at Thebes, where he made for himself a genealogy which connected him by lineage with a god in the sixteenth generation. But the priests did for him what they did for me (who had not traced my own lineage). They brought me into the great inner court of the temple and showed me there wooden figures which they counted up to the number they had already given, for every high priest sets there in his lifetime a statue of himself; counting and pointing to these, the priests showed me that each inherited from his father; they went through the whole tale of figures, back to the earliest from that of him who had lately died. Thus when Hecataeus had traced his descent and claimed that his sixteenth forefather was a god, the priests too traced a line of descent according to the method of their counting; for they would not be persuaded by him that a man could be descended from a god; they traced descent through the whole line of three hundred and forty-five figures, not connecting it with any ancestral god or hero, but declaring each figure to be a "Piromis" the son of a "Piromis," that is, in the Greek language, one who is in all respects a good man".

Again, in 142 we read that from the first king (Menes) down to Sethos (named in 141) there were 341 generations, "in all which time (they said) they had had no king who was a god in human form, nor had there been any such thing either before or after those years among the rest of the kings of Egypt...."

Herodotus is certainly not recording the official belief of the Egyptians. In *A History of the Ancient Egyptians*, by James Henry Breasted (New York, Scribner's, 1911), we read (112):

"...The state theology had always represented the king as the successor of the sun-god, and he had borne the title 'Horus', a sun-god, from the beginning; but the priests of Heliopolis... <, beginning with the fifth dynasty,> demanded that he be the bodily son of Re, who henceforth would appear on earth to become the father of the Pharaoh... every Pharaoh is the bodily son of the sun-god, a belief which was thereafter maintained throughout the history of Egypt...."

Interesting in connection with the Japanese claim is the fantastic theory developed by W. J. Perry, in his book called *The Growth of Civilization*². He asserts (53) that "Egypt was the home of civilization". He maintains also that from the Ancient East, and particularly Egypt, civilization spread to all corners of the globe, and that all members of the ruling houses, the world over, are members of the same military aristocracy, related to the old royal house of Egypt and therefore properly called "Children of the Sun". "... It sounds strange", he says (150), "to think that the Mikado of Japan is related, ultimately, to the ruling groups of Europe and to the Pharaohs of Egypt, but such is, in my opinion, the truth of the matter...."

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¹I give the passage in the translation by A. D. Godley, in *The Loeb Classical Library*, I 449, 451 (1921).

²Professor William A. Heidel, in a paper entitled *A Suggestion Concerning Plato's Atlantis*, *Proceedings of the American Academy of Arts and Sciences* 68.195, n. 19 (Boston, May, 1923), comments on this statement as follows: "If an Egyptian priest said that, he was a heretic; for the orthodox view, from early times, was that the king was quite literally the 'son of the Sun-god.' Is it not obvious that we are dealing with the fiction of a Greek rationalist?"

³New York, Dutton. There is no date on the title-page, but the Preface is dated in 1923.

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This Index has been worked out along the lines followed in the General Index to Volumes I-XVI, and in the separate Indexes to Volumes XVII-XXVI.

In the preparation of this Index I have been very greatly aided by my Secretary, Miss Bertha Medlock.

The name of an author and the title of an article are given in full only once, at the place where the author's surname appears in the alphabetical sequence. The title of a book reviewed will be found in full only where the name of the author appears in the list given under the caption "Reviews". To the titles of articles or subjects (e. g. "Adams, John, and Pliny the Younger") the names of the

authors are not attached; one can readily find the names by looking up the page or the pages specified.

In determining the places of certain items in the general alphabetical sequence, or the places of items within a group or a paragraph, certain initial words, "An" and "The", "Der" and "Die", are disregarded.

"Aeneid: Vergil" = "For the Aeneid see under Vergil"; "Acrocorinth, Excavations: Reviews, Blegen" = "see Reviews, under the name Blegen"; "see above", "see below" = "see above", "see below" under the same caption (i. e. in the same paragraph or group of entries).

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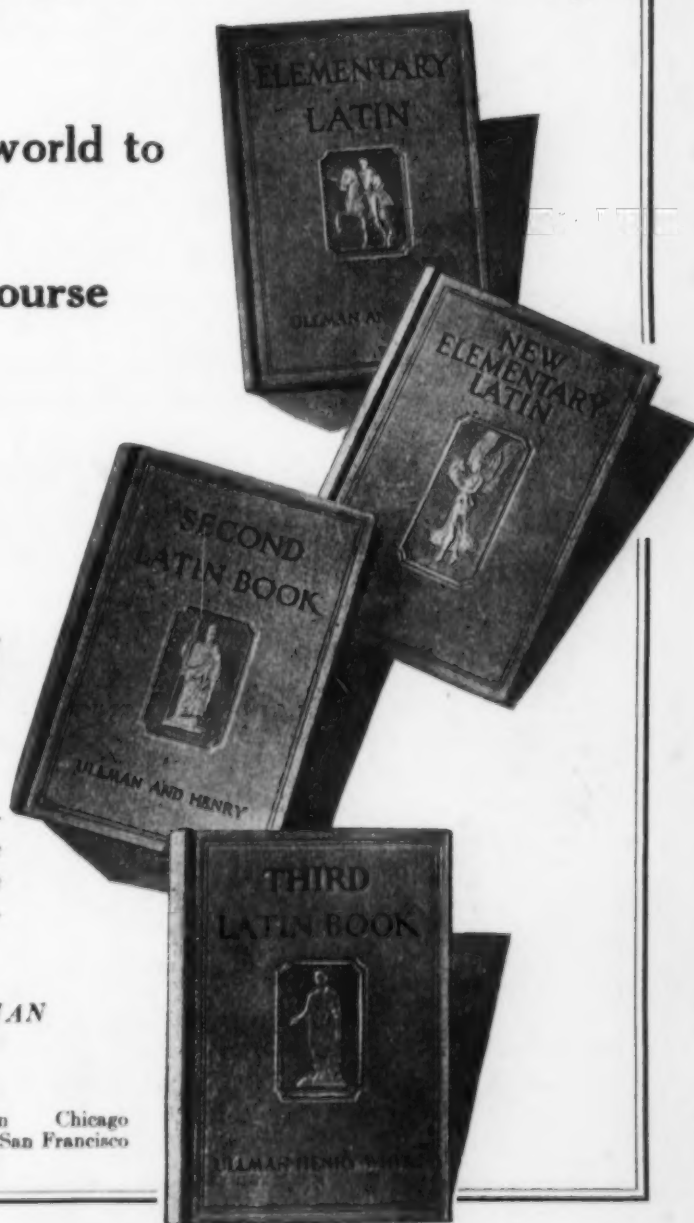
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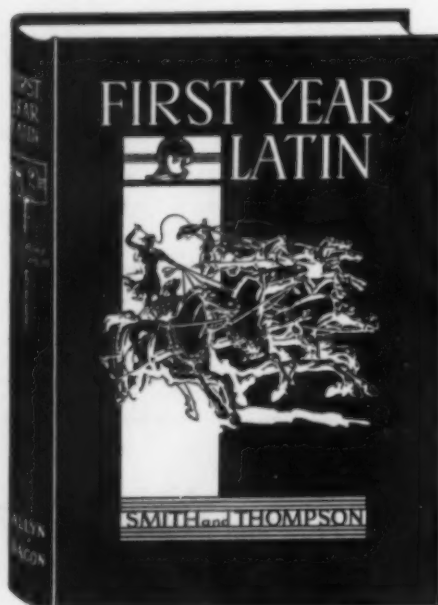
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